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No. 93-206

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

CHURCH OF SCIENTOLOGY INTERNATIONAL, INC.,
Petitioner,

v.

MITCHELL DANIELS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Did the Court of Appeals correctly apply this Court's established standards governing proof of actual malice to the particular facts of this case?

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RESPONDENT'S BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

A balanced summary of the undisputed facts relied upon by the Court of Appeals—but omitted from the petition—makes plain the factbound nature of the judgment below. In June of 1991 the Church of Scientology International, Inc. (CSI) began running a series of full-page color advertisements in the *USA Today* newspaper. Pet. App. 2. Several of the ads attacked psychiatric medicine, Eli Lilly and Company, and Lilly's FDA-approved antidepressant medication, Prozac. *Id.* The tone

of CSI's ads was typified by descriptions of Lilly as a promoter of Adolf Hitler and references to Lilly as the "purveyor of dangerous drugs." *Id.*

Respondent Mitchell Daniels, then Lilly's Vice President for Corporate Affairs, joined representatives of the National Institute of Mental Health as well as mental health professional and patient groups in a meeting with *USA Today* to discuss the distortions in the Scientology ads. Before commenting on CSI's attacks, Mr. Daniels had reviewed "two court cases" (which CSI's petition mentions) and "numerous articles about Scientology published in magazines and newspapers" (which CSI's petition does not). *See* Pet. App. 7.[1] The Court of Appeals noted that the articles, "some of which received awards for journalistic excellence—came from a variety of reputable publications and comprised an impressive collection of research about Scientology." Pet. App. 7-8. The Court of Appeals' own description of the articles merits quotation in full:

> The articles detailed criminal convictions of a number of the Church's leaders for extortion, forgery, breaking into government offices, bugging the IRS building, and planting Scientology agents in drug-control and intelligence agencies of the government. They reported accusations of mind control by ex-churchmembers and members' families, and chronicled the story of an ex-member who sued the organization—and was awarded $30 million—for mental anguish suffered while a member. They discussed the

[1] Mr. Daniels was also aware of this Court's holding that payments to Scientology for E-meter auditing and other goods and services are not proper tax deductions because they are exchanges of money for value. J.A. 139-40. *See Hernandez* v. *Commissioner*, 490 U.S. 680 (1989). Subsequent court opinions have continued to support Mr. Daniels' view of Scientology. *See, e.g., Church of Spiritual Technology* v. *United States*, 26 Cl. Ct. 713, 718 (1992) (extensive opinion of the United States Claims Court examining the operations of CSI and various other Scientology corporations and concluding they are "something of a *deceptis visus*").

> exorbitant rates charged by the Church to its members in exchange for services, "auditing," and training courses designed to facilitate the spiritual quest. The articles related the transformation of the organization from a "precision science," to a form of psychotherapy, to a religion, a transformation variously described as "expedient," "skillful propaganda," and "a sweeping and sophisticated campaign to gain new influence." Many of the articles quoted court opinions. Virtually all of the articles mentioned the lengthy legal battle that the Church of Scientology of California engaged in when it claimed tax-exempt status, the same battle that resulted in the two court opinions previously discussed. The revocation of tax-exempt status was a recognition on the part of the courts, several of the articles reported, that the Church of Scientology had "made a business out of selling religion." *See, e.g., The Scientology Story: Shoring Up its Religious Profile,* Los Angeles Times, June 25, 1990 (quoting *Church of Scientology,* 83 T.C. 381 (1984)).

Pet. App. 8.

It was against this background of research that Mr. Daniels met with the editorial board of *USA Today*. During spontaneous discussions with these journalists he uttered the statement that made him the victim of one of three lawsuits that Scientology has (so far) brought against Lilly and its employees in the past two years:

> One thing we want you to understand is that the Church of Scientology is no church. It's a commercial enterprise. Every judge and every investigative journalist who has ever looked at it has come away with that conclusion.

Pet. App. 2-3.

In reviewing the district court's grant of summary judgment, the Court of Appeals assessed whether CSI had presented sufficient evidence to support a finding of clear and convincing proof of actual malice. Pet. App. 5

(citing *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242 (1986)). The Fourth Circuit applied *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U.S. 657 (1989), and *St. Amant* v. *Thompson*, 390 U.S. 727 (1968), as governing authority: " '[R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.' " Pet. App. 9 (quoting *St. Amant*). The Fourth Circuit noted that "failure to investigate, 'where there is no reason to doubt the accuracy of the sources used . . . cannot amount to reckless conduct.' " *Id.*

Applying this settled law, the Court of Appeals held that in view of the volume of published material "describing the organization in terms that are at odds with a common understanding of what a 'church' is—it is impossible to conclude that Daniels entertained serious doubts as to the truth of his statement or spoke with a high degree of probable falsity." Pet. App. 10. The Fourth Circuit rejected CSI's contentions that Mr. Daniels was required to read every one of the (multitudinous) court cases involving Scientology before he could speak the words "every judge." *Id.* The Court of Appeals also rejected CSI's claim that it could show actual malice based on Mr. Daniels' supposed "ill will." *Id.* In short, given the wealth of published information supporting his statement and the absence of *any* evidence that Mr. Daniels doubted its truth, CSI failed to produce evidence that would allow a jury to find clear and convincing proof of actual malice. *Id.*

REASONS FOR DENYING THE WRIT

THE OPINION BELOW APPLIES SETTLED LAW TO SPECIFIC FACTS, CREATES NO CONFLICT OF AUTHORITY, AND PRESENTS NO ISSUE THAT MERITS THE COURT'S ATTENTION

The Court of Appeals' opinion represents a straightforward application of this Court's actual malice standards to a particular factual record. The judgment below creates no conflict with any other court of appeals or state supreme court. The petition's description of the Fourth Circuit's opinion and the issues it is claimed to present is not supported by the opinion itself. In short, the petition merely represents a disagreement with the Court of Appeals' evaluation of a particular fact pattern that is highly unlikely to recur.

A. The Petition Relies Upon a "Finding" of Purposeful Avoidance of Truth That the Courts Below Never Made

This case is driven by the Scientologists' insistence that any deviation from their particular world view amounts to "purposeful avoidance of the truth." According to CSI, court cases holding that Scientology is a religion for purposes of the First Amendment—even in the course of denying Scientology tax exempt status due to its commercial operations—conclusively show that Mr. Daniels' statement was false. Pet. 5-8. As the Fourth Circuit noted, however, courts do not evaluate religious truth. Rather, application of First Amendment protection depends only on showing that a claimant's beliefs are "sincerely held" and "in his own scheme of things, religious." Pet. App. 8-9 (quoting *United States* v. *Seeger*, 380 U.S. 163, 185 (1965)).

The two court cases Mr. Daniels read denied tax exempt status to the Church of Scientology of California because its commercial activities inured to the benefit of

private individuals.[2] Pet. App. 6. In view of these holdings, the Court of Appeals concluded that reading the opinions on which CSI relies 'fairly permits the conclusion that the courts decided that CSI was a church *as well as the conclusion that it was not.*" Pet. App. 7 (emphasis added). Even without examination of the articles that supported Mr. Daniels' statement, therefore, he cannot be said to have "avoided the truth" of CSI's status as a church because there was no such "truth" to avoid.

B. None of the Three Issues Claimed to Merit Certiorari Review is Actually Posed by the Opinion Below

CSI purports to find three certworthy issues in the Fourth Circuit's opinion. While each of these issues depends on CSI's faulty view of avoided truth as discussed above, they also fail for an independent reason. In each instance, the so-called holding of the Court of Appeals attacked by CSI does not exist.

CSI first claims that the Fourth Circuit imposed a requirement of "*direct* proof" of the defendant's awareness of falsity. Pet. 11 (emphasis in original). This supposed holding is said to conflict with a holding in *Masson* v. *New Yorker Magazine, Inc.*, 960 F.2d 896 (9th Cir. 1992), that "where direct proof is missing," liability may

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[2] The Court of Appeals also pointed out that the court opinions did not involve CSI, but rather its predecessor as the "Mother Church" of Scientology, the Church of Scientology of California. Pet. App. 7. Indeed, none of the cases CSI cites in its petition to argue that Mr. Daniels' statement is false involved CSI. *See* Pet. 6-8. In order to maintain this action, CSI would be required to show that Mr. Daniels' statement was "of or concerning" CSI specifically, and not a "group libel" about Scientology generally. *See* Pet. App. 3 (citing *Gazette, Inc.* v. *Harris*, 229 Va. 1, 325 S.E.2d 713 (1985), and *Ewell* v. *Boutwell*, 138 Va. 402, 121 S.E. 912 (1924)). Conceding this point to CSI, however, would merely leave it on the other horn of a dilemma—CSI has cited no case that purports to show Mr. Daniels' statement about *CSI* is false, much less made with actual malice. Either the statement at issue is not about CSI or it is not false; CSI cannot have it both ways.

be found where there were "obvious reasons to doubt" the accuracy of the statement. Pet. 11-12. In fact, however, nowhere in the Fourth Circuit's opinion—including the page cited by CSI—did the Court state or imply a "direct proof" requirement.

CSI's statement that the Court of Appeals "has held that a finding of purposeful avoidance of the truth does not satisfy the actual malice requirement without other independent proof," Pet. 11, is doubly puzzling. The opinion contains neither a finding of purposeful avoidance of truth nor a direct proof requirement. Moreover, the Ninth Circuit standard with which the opinion below is said to conflict—one based on "obvious reasons to doubt"— is the standard the Fourth Circuit explicitly applied. *See* Pet. App. 9 (failure to investigate cannot amount to reckless conduct "where there is no reason to doubt the accuracy of the sources used").

CSI's second contention is that the Court of Appeals erred by applying an "objective" standard of actual malice instead of the subjective standard called for by this Court's cases. Pet. 13. As an initial matter, this is a strange argument in view of the fact that the subjective standard gives *more* protection to the libel defendant than an objective standard. *See* Pet. App. 9 (quoting *St. Amant* v. *Thompson*). CSI appears to contend that Mr. Daniels could subjectively "know" his statement was false even though it was objectively true! These problems aside, the Court of Appeals' opinion explicitly applied a *subjective* standard here. Pet. App. 9 (reckless disregard not measured by "whether a reasonably prudent man would have published" but by whether "defendant in fact entertained serious doubts").

Finally, CSI contends that the Fourth Circuit failed to undertake a "cumulative" analysis of the evidence. Pet. 14. But the Court of Appeals addressed each of CSI's arguments, and acknowledged CSI's view of the context surrounding them. *See, e.g.*, Pet. App. 7 (acknowledg-

ing CSI's contention that Daniels' basis for his statement must be viewed in light of the fact that he is a lawyer). The problem with CSI's argument is that there was no evidence to accumulate. CSI relies wholly on its own view of the court cases and Mr. Daniels' supposed "ill will." Given the Fourth Circuit's finding that Mr. Daniels' view of those cases was equally reasonable, CSI's position boils down to this: whenever a speaker utters a statement with which a plaintiff could reasonably disagree, all the plaintiff need do to reach a jury is advance some proof of the speaker's "ill will." That is not the law, nor could it be.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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